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C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 000134

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SUBJECT: ECONOMIC RAMIFICATIONS OF CHAVEZ' ENABLING LAW:
IS ATLAS SHRUGGING?

REF: A. CARACAS 00091

[1](#)B. CARACAS 00084

Classified By: Economic Counselor Andrew N. Bowen for reasons 1.4(b) and (d).

[1](#)1. (C) Summary. The National Assembly unanimously passed preliminary approval of the Ley Habilitante ("Enabling Law") during a special emergency session on January 18. When fully approved, probably on January 24, the Enabling Law will permit Chavez to control the economic pulse of the country. It gives powers to the President to issue executive orders carrying the force of law in intentionally vague, broadly-define dimensions of the economic sphere, including banking, commerce, taxation and with respect to the general "social economic environment." With a Chavista-packed Supreme Court as the backstop, there does not appear to be any person or institution capable, or willing, to rein in Chavez' march forward to consolidate his personal political power and impose his collectivist "socialist" vision. End Summary.

Void for Vagueness?

[1](#)2. (SBU) The Enabling Law transfers legislative power from the National Assembly to the President in ten broadly-defined areas, enabling the President to effectively legislate by decree (Reftel A). Ostensibly a legal document, the law reads more like a typical Chavez speech than a piece of legislation. Whereas a preamble generally sets the stage for operative provisions of the law itself, the Enabling Law contains a preamble roughly twice as long as the law's three articles. The preamble also launches into a diatribe against the capitalist "hegemonic paradigm." Rumors abound that the law was drafted by Cuban lawyers close to Chavez.

[1](#)3. (C) Econoffs met with Elisabeth Eljuri and Victorino Tejera, attorneys at the Canadian oil and gas law firm Macleod Dixon (strictly protect). According to Eljuri and Tejera, the concept of an enabling law is not a new one under Venezuelan constitutional law and has been used previously on a number of occasions. In prior enabling laws, including the previous one under Chavez' presidency in 2000, powers delegated to the president were strictly limited and the drafting was tight in scope. Eljuri said that in the 2007

law, the National Assembly was handing Chavez a "blank check." Bernardo Weininger, an attorney at the U.S. firm Squire Sanders (strictly protect), opined that the National Assembly has agreed to "let Chavez do whatever he wants."

¶4. (SBU) During a recent interview on a talk show on the private television network Globovision and in separate conversations with PolCouns, Venezuelan Constitutional law scholar Gerardo Blyde contrasted the 2000 Enabling Law to the 2007 version. Whereas the current law contains ten broad spheres of activity, the 2000 Enabling Law was a tightly-drafted document limited to five spheres. The forty-nine decrees that were a product of the 2000 Enabling Law were predictable (mostly economic in nature), in Blyde's view, whereas the 2007 law is intentionally vague with no clear limits of how far Chavez will be able to go.

The Mother of All Revolutionary Laws

¶5. (SBU) Chavez hit hard with rhetoric on the importance of the Enabling Law in a speech during the swearing-in of the Presidential Reform Council on January 17. When Chavez asked the crowd to name the first of his five motors of revolutionary change, they responded in unison "Poder Popular" (People Power). Chavez corrected his supporters and said that the first pillar of change was the Enabling Law, calling it "the mother of all revolutionary laws." He continued in this vein, referring to his cabinet as the "enabling cabinet" and the "enabling motor" that would not sleep, as they coordinated, planned, and implemented the decrees arising from the Enabling Law.

CARACAS 00000134 002 OF 003

Nationalizations and Commerce

¶6. (C) The Enabling Law opens the door to nationalization by decree, authorizing Chavez to issue executive orders in the broadly-defined "economic and social environment." The legal text reads that the President can dictate norms aimed at bringing existing institutions and legal standards within the new "socialist" economic model. Chavez would have the authority to broadly transform the capitalist "hegemonic paradigm" (as described in the preamble) into "a collective, natural order with the systems of production controlled by a socialist vision." Specifically, the President would be authorized to "regulate" foreign investment (see Comment, paragraph 8).

¶7. (C) Another likely Chavez target with his new powers under the Enabling Law is the commercial code. In his inauguration speech, Chavez said that the commercial code was an impediment to launching twenty-first century socialism. Eljuri and Tejera told Econoffs that they expected changes to come to the commercial code, though they were uncertain as to what form such changes would take. Two rumored amendments they mentioned were requiring a government member to attend management meetings of foreign companies, and imposing limits on profit margins. Eljuri joked about how government representatives sitting in on partners' meetings at her firm would be received. Hernando Diaz, managing partner at Squire Sanders (strictly protect) said that the commercial code was in need of a major rewrite, but not in the direction he expected Chavez to take it. (Note: Venezuela's commercial code dates from 1904 and its last major revision was in 1956. End Note.) He shared Eljuri's concern regarding oversight of board and management meetings, adding that a revised commercial code would likely contain numerous references to a company's responsibility to the social community and carve out a privileged place for cooperatives.

¶8. (C) Comment: By regulating foreign investment and adapting existing legislation and institutions to a new social model, Chavez means to bring foreign investment and publicly-owned companies under the control of the BRV. The immediate target appears to be CANTV (approximately 90 percent foreign-owned), and the electricity sector, with the strategic petroleum associations in the Faja of the Orinoco a mid-range target. With CANTV's nationalization a fait accompli in the eyes of its management, the open question is what form the nationalization would take (Reftel B). End Comment.

Finance and Taxation

¶9. (C) The Enabling Law also calls for a "re-dimension" to the Central Bank of Venezuela, another recent Chavez target. Chavez has stated recently that the independence of the Central Bank, enshrined in Article 318 of Venezuela's constitution, is a product of a "negative thesis of neoliberalism." Banking Superintendent, Trino Alcides Diaz, described by Eljuri as a leftist ideologue, recently called it "absurd" to think that the Central Bank had ever been given complete autonomy constitutionally, and that the bank would "work together with the executive to propel socialism in the twenty-first century."

¶10. (C) Chavez would receive broad, discretionary powers to stamp his brand of socialism on all aspects of the banking sector. His potential authority could include the creation of bi-national funds dedicated to special development projects (Note: Venezuela and Iran have developed such a USD 2 billion fund and declared that some of its funds will be made available to third countries), and to "democratize" credit and access to finance through support of endogenous development projects and microfinance. Diaz said that Chavez plans to introduce a banking law within the framework of the Enabling Law that would create new cooperative banks, and could require banks to dedicate a part of their earnings to social development programs.

¶11. (C) The Enabling Law also gives Chavez broad powers to

CARACAS 00000134 003 OF 003

enact measures with respect to taxation. Diaz stated that decrees would be forthcoming to more strictly control operations in the Caribbean and other "fiscal paradises." While stamping out money laundering and tax shelters is a commendable goal, Chavez' motivation to move against off-shore tax havens is likely more political than economic. High net worth individuals and corporations in Venezuela frequently own assets off-balance sheet for a variety of reasons- including taxation, favorable accounting treatment and, in the case of individuals, for personal security reasons. This would give Chavez increased leverage to move against potential political opponents.

Comment

¶12. (C) Reference to the Central Bank in the Enabling Law is a perfect example of Chavez' muddling of legal principles and disregard for rule of law. One of the fundamental points in constitutional law is that a legislature can only delegate to the executive the powers that it itself possesses. The National Assembly has no power to curtail the independence of the Central Bank, which would require a constitutional amendment. This distinction appears to have been lost on Chavez.

¶13. (C) The Enabling Law gives Chavez tremendous powers to stamp his brand of political economy on Venezuela by executive order, including nationalizing private companies, foreign and domestic, and dominating the banking and tax

sectors. The law is intentionally vague and provides no limits on how comprehensively Chavez can interpret the legislation. There is no reason to think that Chavez will use any restraint or discretion in exercising these broad powers.

¶14. (C) The vagueness of the Enabling Law has prompted an overall nervousness in the business and legal community as speculation abounds about how far Chavez will go. We have noticed a widespread general feeling of hopelessness and fatalism among educated Venezuelans about being able to turn around -or even slow down- the "socialist revolution" once the Enabling Law is firmly in place. As the process moves forward, more and more mediocrity will predominate the state-dominated economic sector, making it even harder for foreign companies to do business and further accelerate the brain drain.

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